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BEFORE THE ORIGINAL  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of Petitions  
and Related Pleadings Regarding  
The Price Time Access Rule,  
§ 73.658(k).

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94-123

MMB File No. 900418A  
MMB File No. 870622A  
MMB File No. 920117A

**REPLY COMMENTS OF KING WORLD PRODUCTIONS, INC.**

The record compiled in this proceeding makes abundantly clear that the Prime Time Access Rule ("PTAR") has advanced and continues to promote the public interest. In these Reply Comments, King World Productions, Inc. ("King World") responds briefly to the comments submitted by parties who urge the Commission to repeal, or modify, PTAR.

An examination of the comments submitted by the National Broadcasting Company ("NBC") and CBS, Inc. ("CBS") is particularly instructive because the claims made by those parties confirm the correctness of the conclusion that PTAR has been and continues to be necessary to the realization of source and outlet diversity<sup>1/</sup>.

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<sup>1/</sup> To avoid burdening the Commission we refrain from further comment on arguments fully addressed in our original filing, including, in particular, those pertaining to the so-called constitutional issues surrounding PTAR. In its most recent pronouncement, the Supreme Court went out of its way to explicitly confirm that the scarcity rationale underlying Red Lion and its progeny remains the standard for applying the First Amendment to over-the-air broadcasting. See Turner Broadcasting System v. FCC, 62 USLW 4647, 4651 (June 27, 1994). First Media's constitutional arguments have, once again, been repudiated by the courts and inquiry into the First Media argument would be purposeless.

NBC bases its assault upon PTAR on the premise that the rule has "failed to achieve its policy objectives". Comments of NBC at page ii. Although this assertion seemingly puts NBC at loggerheads with CBS and with Hubbard Broadcasting Company and Channel 41 Inc. --- which strenuously maintain that the rule is no longer necessary because it has achieved its public interest objective<sup>2/</sup>--the divergency in views turns out to be more apparent than real. NBC acknowledges that

First-run syndication is today a vibrant and growing market for producers. There are over 135 original programs being offered in first-run syndication.

NBC Comments at 10. Indeed, in asserting that, without access to the crucial prime time period, it finds the production of first-run programming to be "uneconomic" (NBC comments at 22), NBC effectively admits that the emergence of first-run syndication as a true alternative to network controlled programming is the direct result of PTAR.

Although NBC, and CBS have exaggerated the robustness of the first-run syndication marketplace (see Comments of King World at 6-7), the acknowledgment that PTAR has made a very real contribution to program diversity and choice serves only to reinforce the conclusion for which we contended in our original comments: If further proceedings are unavoidable, the Commission should proceed with the utmost of caution. Rules

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<sup>2/</sup> See Petition for Rulemaking of Hubbard Broadcasting, Inc., at 13; Channel 41, Inc., Petition for Rulemaking at 11-18; see also Comments of CBS in MM Docket No. 91-221 at 56 (filed Nov. 21, 1991) ("CBS Comments").

that work should not be tampered with; and NBC's own comments demonstrate that PTAR has and continues to serve the paramount goal of diversity and choice. See, King World Comments at 3-7.

NBC seeks to make a vice of the public interest virtues that the rule has yielded. NBC argues that the "practical result" of PTAR has been to supplant the dominance exercised by the networks over the access period with a new "triopoly" composed of King World, Viacom/Paramount and Fox. NBC asserts that only by opening up the access period to off-network programming can diversity during that time period be achieved. NBC Comments at 13-14

This argument is hopelessly infirm. In the first instance, the claim is a non sequitur. Even if the so-called "triopoly" possessed the market power attributed to it by NBC, the fact is that, in 1994, there are by any measure at least three independent (non-network) voices providing programming to viewers of over-the-air television, in contrast to 1970, where there were none. The introduction of off-network programming into the access period would not increase the number of new voices available to the American public one iota.

Moreover, the "triopoly" simply does not exist. The three companies identified by NBC operate completely independently of one another and, even when considered collectively, possess far less power, and in a much smaller market, than the three traditional networks. King World and its competitors simply do not control the gateway (as each of the three traditional networks does) -- the dominant stations

in the top 50 markets -- through which first-run programming must pass if it is to be successful. And, as NBC is forced to admit, there are a number of large and successful potential entrants into the first-run syndication business. NBC Comments at 17. As a result, it surely cannot be said that PTAR has inhibited competition in the first-run syndicated marketplace or that the undeniable success of King World and others in this unique market moots the need for this modest but important bulwark of diversity.

NBC's invention of the "triopoly" theory is, thus, neither accurate nor responsive to the issue. It simply cannot be denied that PTAR has contributed to the creation of a truly independent alternative to network-owned and-dominated programming. In these circumstances, the only relevant question is this: What will happen to diversity if the rule is modified or repealed?

NBC declines to address this question. CBS did so in its earlier comments on the subject. It acknowledged that, if PTAR is modified or repealed, there would, at least, be a "redistribution" of off-network and first-run programming between affiliates and independent stations and between access scheduling and scheduling in other dayparts. CBS Comments at 73. CBS has now abandoned this probably accurate forecast. It now asserts that if the rule were changed or repealed:

[i]t is a safe assumption that top-50 market affiliates... would also continue to be major purchasers of first-run syndicated product for 'access period' programming....

Comments of CBS, Inc., in MMB File No. 900418A, et al., at 11.

CBS does not explain why it has substituted an assumption for its earlier analysis. The answer is obvious: "redistribution" would, in fact, diminish the ability of individual producers and syndicators of first-run programming to gain access to audiences during what even NBC admits to be the crucial hours and the key markets and, therefore, some other ground -- an unsupported and unsupportable "assumption" -- is offered to explain away the need for PTAR.

In the last analysis, NBC's refusal to address the relevant question and CBS's substitution of an assumption for analysis confirm the conclusion that, if any further proceedings are to be initiated with respect to PTAR, they should take the form of a Notice of Inquiry. The Commission's decisional process with respect to the modification or repeal and, for that matter, imposition of a rule entails its formulation of predictions. If the Commission's decisions are to be prudent, these predictions must be based upon empirical evidence and reasoned analysis. The empirical evidence shows that, despite any changes in the video marketplace, the Prime Time Access Rule remains an important counterweight to the control enjoyed by the three traditional networks -- through their owned-and-operated and affiliated stations -- of programming made available to the American public on over-the-air television. King World Comments at 7-12. CBS and NBC ask the Commission to ignore this evidence and the analysis that flows from it and to rely, instead, upon mere "assumptions." This is something that, as a matter of sound

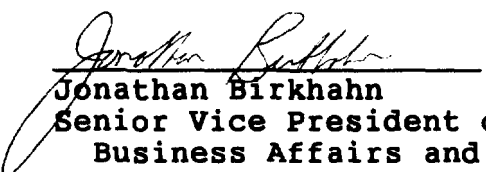
policymaking, the Commission should not do. If further proceedings are determined to be warranted, the Commission should indulge in no assumptions or tentative conclusions, and should instead proceed by Notice of Inquiry.

Respectfully submitted,

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